IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3904 OF 2005

Super & Stainless hi-Alloys ...Petitioners
Vs.
Appellate Authority for Industrial
& Financial Reconstruction & Ors. ...Respondents

Mr.Milind Sathe for the Petitioners
Mr. V. R. Dhond i/b. M/s. M.P. Rege & Co. for Respondent No.8

CORAM : F.I. REBELLO &
ROSHAN DALVI, JJ
DATED : 23RD DECEMBER, 2005

P.C.

1. The Petitioners are a Company registered in 1995. The Petitioners claim to be an Industrial Company having been listed at serial No.1-A (6) 1-A (7) of the First Schedule of the Industrial (Development and Regulations) Act, 1951 (IDRA). The Petitioners have 2 units – one at Aurangabad and one at Nasik purchased under an agreement for sale dated 3rd March 1999 entered into between Respondent No.8 and the Petitioners for a consideration of Rs.2,44,64,310/- . The Petitioners paid Rs.66,97,178/- to Respondent No.8 leaving a balance of Rs.1,77,67,132/- . The Petitioners were put in possession of the property pending receipt of the balance sale consideration as

licensee of Respondent No.8 under Clause 4 of the agreement for sale under which it was specified that the Petitioners did not have any right, title or interest of any nature whatsoever in the properties under the said agreement. Respondent No.8 had the unconditional right to cancel the sale, terminate the agreement and re-enter upon the property upon any default committed by the Petitioners in the payments of the monthly installments for the balance consideration under Clause 5 of the said agreement. Hence, it can be seen that the Petitioners were not the owners of the units agreed to be purchased by them.

2. Pending repayment of the balance consideration the Petitioners filed the reference under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) before the Board for Industrial and Finance Reconstruction (BIFR) on 31st August 2001.

3. BIFR passed its order dated 8th October 2002 dropping the reference of the Petitioner with liberty to the Petitioners to approach the BIFR after their disputes with Respondent No.8 was sorted out.

4. The Petitioners challenged that order before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) who by its order dated 17th November 2004

concurred with the order of the BIFR and treated the Reference as having been adjourned sine-die. AAIFR further observed that if the question of ownership of the Petitioners undertaking was settled, the Petitioners reference could be pursued. The Petitioners have challenged these orders.

5. The Petitioners must establish that they are an industrial company under Section 3(e) and an industrial undertaking under Section 3(f) of SICA.

6. Under Section 3(e) of SICA an Industrial Company is a Company which owns one or more industrial undertakings. Under Section 3(f) of SICA an industrial undertaking means an undertaking pertaining to a Scheduled Industry carried on in one or more factories by any Company.

7. The Petitioners do not own any undertaking. The agreement for sale shows that they are licences and have no right, title and interest in the properties agreed to be sold to them.

8. It is argued on behalf of the Petitioners that they are an undertaking under Section 3(f) under the licences obtained by the Petitioners. The concept of an “undertaking” does not mean or include any such

intangible asset. It is required to be an undertaking in a factory of the Company. The undertaking must, therefore, necessarily be a tangible, immovable property. Under Section 2(e) the Petitioners must own that undertaking.

9. The Petitioners carry on their industry at Nasik, but without owning the unit at Nasik. Respondent No.8 have already taken possession of the Aurangabad unit of the Petitioners. The Petitioners have challenged the action of Respondent No.8 in taking possession of the Nasik unit. The Petitioners continue in possession only as licensee thereof.

10. There is a dispute between the Petitioners and Respondent No.8 with regard to the right, title and interest of the Petitioner which can be adjudicated only in a Civil Court. The Petitioners are put in possession only as licencees under the Agreement of Sale. The Petitioners have defaulted in payment of installments under the Agreement for sale. The Petitioners do not own any unit purchased by them from Defendant No.8. The Petitioners cannot be called an Industrial Company. Hence, they cannot maintain a reference under Section 15 before the BIFR.

11. Consequently the orders of the BIFR and AAIFR cannot be challenged.

12. We see no substance in this Petition. Accordingly the Petition is dismissed.

(F.I.REBELLO, J.)

(ROSHAN DALVI, J.)